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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,949	08/18/2003	Stefan Bertil Ohlsson	2002B116/2	4296

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EXAMINER	
NUTTER, NATHAN M	
ART UNIT	**PAPER NUMBER**
1711	

DATE MAILED: 09/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/642,949	OHLSSON, STEFAN BERTIL	
	Examiner	Art Unit	
	Nathan M. Nutter	1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 August 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5,8-22,24 and 26-78* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5,8-22,24 and 26-78* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *08-06*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 17 August 2006 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 64-66, 68, 69, 71, 72 and 74-78 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The claims recite parameters that are not present in the Specification, as originally filed.

In each of claims 64, 65 and 66, applicants recite a CDBI range of "at least 83%," which is not shown by the Specification, as filed.

Claims 68, 69, 71, 72, 74 and 75 recite a weight range for the component (a) which is not in the Specification, as originally filed.

Claims 76-78 recite melt index ranges that are not in the Specification, as originally filed.

Applicants cannot arbitrarily pick ranges without showing support for these ranges.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-5, 8-22, 24 and 26-78 are rejected under 35 U.S.C. 103(a) as obvious over Whaley.

The reference to Whaley teaches the manufacture of polyethylene films having "high clarity" that may be monolayer and used in shrink-wrap methods for articles, as recited in claims 1-5, 8-16 and 36-46, or multi-layer and used for shrink-wrapping articles, as recited in claims 17-22, 24, 26-35 and 51-60. Note column 1 (lines 6-12) for high clarity and column 2 (lines 42-46) and Tables 1-5 for low haze values for the composition. Note column 6 (lines 26-41) for the employment of the compositions as single layer or multiple layer films. Component A of the reference is the second

component, "(b) low density polyethylene (LDPE)," recited herein, and the Component B of the reference is the first component, "(a) a polyethylene copolymer." The reference teaches that the film composition may comprise a polyethylene copolymer having a Composition Distribution Breadth Index (CDBI) "in the range of from 75 to 90%," overlapping with that claimed herein and a Molecular Weight Distribution (MWD) "in the range of from 3.5 to 15," overlapping at a MWD of 3.5-5.5, at column 2 (lines 36-41). At column 5 (lines 41-49), the patent discloses a Melt Index (MI) "in the range of from 0.1 dg/min to 1000 dg/min" (0.001 g/10 min to 10 g/10 min), which overlaps with that claimed herein at "0.1 g/10 min to 10 g/10 min". The reference teaches the polymer to have a density "in the range of from 0.86 to 0.97 g/cm^3," embracing the density range recited herein at column 5 (lines 51-55). The reference teaches the inclusion of "(b) a low density polyethylene (LDPE)" at Examples 1 and 2, column 7, and column 5 (lines 51-55), and that may include the high density polyethylene in concept at the paragraph bridging column 5 to column 6, as recited in instant claims 12, 13, 32, 49 and 50. The weight percentages of inclusion for each component (a) and (b), as recited in instant claims 9-11, 27-30 and 46-48, are shown at column 2 (lines 23-27) to be "Component A comprises between 10 to 90 weight percent polymer blend and Component B comprises between 90 to 10 weight percent of the total weight percent polymer blend." The reference teaches at the Examples and Tables 1 and 2 the manufacture of "(n)ominal 1.0 mil (25.4 μm) films are made," which embrace those recited in claims 14, 15, 33 and 34. As regards the recitations in instant claims 16 and 35, it is submitted that the thickness of the film, as inferred by the term "nominal" is clearly manipulable

dependent on orifice size for the extrusion process. The values for the clarity of the film, though not shown by the reference in percentages would be expected to be within those recited and claimed since the reference teaches low haze values in Tables 1-5, "high clarity" at column 1 (lines 6-12) and the composition is employed in the optical arts. Note the Abstract. While the reference is not specific to "puncture resistance damaging energy value(s)" in mJ/μm, in Table 1, "Puncture Resistance" is shown in units of "in-lb/mil" with attendant high values. The polyethylene copolymer and the low density polyethylene are taught by the reference to have essentially all of the physical characteristics, except for melt index ratio for the polyethylene copolymer, as those recited and claimed herein. The melt index ratio, as well as the clarity values, puncture resistance, plastic force and shrink stress, would be inherently embraced by the reference since all of the other features, including monomeric composition, are shown by the teachings therein. The final uses are shown at column 6 (lines 8-24). As such, the inventions of the instant claims would have been obvious by the teachings of the patent to Whaley, in the absence of any unexpected results, to a practitioner having an ordinary skill in the art.

Claims 1-5, 8-22, 24 and 26-78 are rejected under 35 U.S.C. 103(a) as obvious over Yap et al.

The reference to Yap et al teaches the manufacture of polyethylene films having "high clarity" that may be monolayer and used in shrink-wrap methods for articles, as recited in claims 1-5, 8-16 and 36-46, or multi-layer and used for shrink-wrapping

articles, as recited in claims 17-35 and 51-60. Note the Abstract and column 11 (lines 38-47) for high clarity and Table 2 for very low haze values for the composition. Note column 8 (lines 17-63) for the employment of the compositions as single layer or multiple layer films. Component A of the reference is the first component, "(a) a polyethylene copolymer," and the Component B of the reference is the second component, "(b) low density polyethylene (LDPE)," recited herein. The reference teaches that the film composition may comprise a polyethylene copolymer having a Composition Distribution Breadth Index (CDBI) "especially greater than 70%," embracing with that claimed herein at the paragraph bridging column 5 to column 6. At column 7 (lines 43-64) the reference teaches the polymer (a) may have a Molecular Weight Distribution (MWD) "less than or equal to 3.3," overlapping at a MWD of 2.5-3.3. At the paragraph bridging column 7 to column 8, the patent discloses a Melt Index (MI) "from 0.5 g/10 min to about 20 g/10 min" which overlaps with that claimed herein at "0.5 g/10 min to 10 g/10 min". The reference teaches the polymer to have a density "in the range of from 0.890 to 0.940 g/cm^3," embracing the density range recited herein at column 5 (lines 18-35). The reference teaches the inclusion of "(b) a low density polyethylene (LDPE)" at column 2, (lines 53-60). The patent may include the high density polyethylene at column 2 (lines 38-60) since other polymers may be included for (A) as recited in instant claims 12, 13, 32, 49 and 50. The weight percentages of inclusion for each component (a) and (b), as recited in instant claims 9-11, 27-30 and 46-48, are shown at column 8 (lines18-25) and the Examples. The reference teaches at the paragraph bridging column 10 to column 11, the manufacture of films having

thickness of "from about 0.25 mil to about 10 mils (6 μm to 254 μm)," which embrace those recited in claims 14-16, and 33-35. The values for the clarity of the film, though not shown by the reference in percentages would be expected to be within those recited and claimed since the reference teaches low haze values in Table 2, "high clarity" at the Abstract and the composition is employed in food wrapping materials, where clarity is relied upon to show the product wrapped therein. While the reference is not specific to "puncture resistance damaging energy value(s)" in mJ/μm, in Table 1, "Puncture energy" is shown in units of "Joules" with attendant high values. The polyethylene copolymer and the low density polyethylene are taught by the reference to have essentially all of the physical characteristics, except for melt index ratio for the polyethylene copolymer, as those recited and claimed herein. The melt index ratio, as well as the clarity values, puncture resistance, plastic force and shrink stress, would be inherently embraced by the reference since all of the other features, including monomeric composition, are shown by the teachings therein. The final uses are shown at column 1 (lines 6-17) and column 2 (lines 9-27). As such, the inventions of the instant claims would have been obvious to an artisan of ordinary skill by the teachings of the patent to Yap et al. no unexpected results are shown on the record.

Response to Arguments

Applicant's arguments filed 17 August 2006 have been fully considered but they are not persuasive.

Arguments from the prior office actions are being repeated herein for the sake of completeness of the record.

Counsel asserts that "(a)s admitted in the office action, neither Whaley nor Yap discloses or suggests polymer blends or films having the presently claimed combination of compositional and physical characteristics." This statement is pure fabrication on the part of counsel in an attempt to persuade the Examiner of patentability of the instant claims. A careful reading of the rejections, as set out above, does not support this assertion. The rejections show that all of the compositional limitations, all that is positively recited as necessary to provide the composition as recited herein, are shown by either reference. The references show these constituents. If the constituents are identical, a skilled artisan would know that the physical characteristics, i.e. melt index ratio, clarity, puncture resistance, plastic force and shrink stress, would follow as being identical, as well. No logic is needed to arrive at that conclusion. Nothing is recited in the claims that would be indicative to any other characteristics being produced thereby. No direct comparisons have been made with the teachings of the prior art. Applicant's assertions that isolated examples from the Specification, using resins that differ in scope, e.g. Example 7 at Table 6, page 43, employs 25% LDPE-A and 75% Resin A, and Example 15 at Table 8, page 47, employs 25% LDPE-C and 75% Resin A. First, different resins for the LDPE constituent are employed. Second, the thickness of the films, as provided, differ almost three-fold. Nothing of invention is shown since the variations in thickness of the final film will determine many physical characteristics, such as tear strength. This is not unexpected, and a skilled artisan would know to manipulate

the thickness to manipulate the characteristics. If counsel wishes to show a comparison, it is requested that they do so in lines with scientific procedures. Surely a film two mm thick is going to have a tear strength and other physical characteristics that differ from one that is made of the identical components and is only one micron thick. Counsel has not shown how the instantly claimed invention differs from those shown by either reference to Whaley or Yap et al. An artisan would know how and why to manipulate the thickness, and applicants have failed to show why the instantly claimed compositions differ in their constituents.

Counsel incorrectly opines that "the physical properties of the films of the present invention are variable and cannot be easily predicted based upon their compositions." It is requested of counsel to show this as an empirical truth since identical compositions MUST have identical characteristics or else they are not identical. Since the compositions are disclosed identically, the physical characteristics would follow to be identical. Based on counsel's assertions, nothing in polymer science can be independently verified since "physical properties...cannot be easily predicted based upon their compositions."

Further, applicants have provided no comparisons to show the results herein to be "surprising and unexpected," as argued. Applicants point to Examples 7, 15, 19 and 20 to assert unexpected results, but there is no comparison made with the instant invention with either prior art reference cited. Applicant opines that the rejection is made under an "obvious to try" scenario, which is not convincing since both references to Whaley et al and Yap et al show the various constituents and the various properties

attendant thereto. It is not obvious to try when the reference teaches all aspects. Since the references are drawn to essentially the same concept of films and their uses, it cannot be an obvious to try situation because of the disclosure teaching all parameters. The references are drawn to films, as recited herein, having "improved optical properties (Whaley et al, title) which applicant contends as an unexpected result. It is pointed out to applicant that a reference does not have to recognize each and every feature relied upon by applicant to obviate the claims. applicant has provided no evidence of unexpected results over the prior art. Applicant points to a few examples and declares they have "unexpected results," without showing unexpected as regards what other reference composition. The references show the same ranges of the "unique combination." Applicant is requiring the standars of a rejection under 35 USC 102, while the rejecdtion was made under 35 USC 103. Applicant repeatedly contends that unexpected results are shown in examples 7, 15, 19 and 20, yet there are no comparisons made with films as disclosed by the teachings of the references. Since the references are drawn to identical analogous art, i.e. films, the argument of "obvious to try" fails. Applicant repeatredly require of the references to recite in one sentence or paragraph each recitation made in the claims. If that were the case, a rejection made under 35 USC 102 would be in order under each of Whaley et al and Yap et al. the references are applied under the auspices of 35 USC 103 because they teach the invention essentially as recited and claimed. although the references do not teach all of applicant's claimed parameters recited in the independent claims, they nevertheless show them as within the scope of their respective patents.

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan M. Nutter whose telephone number is 571-272-1076. The examiner can normally be reached on 9:30 a.m.-6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 571-272-1078. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nathan M. Nutter
Primary Examiner
Art Unit 1711

nmn

27 September 2006